

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DAVID OLMOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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1:23-CV-954-RP
[1:21-CR-146-RP]

ORDER

Before the Court is Petitioner David Olmos’s (“Olmos”) Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (Dkt. 68). On August 10, 2023, Olmos filed a “Motion for Appeal of Conviction,” alleging ineffective assistance of counsel and other constitutional violations. (Dkt. 63, at 1–3). The case was referred to United States Magistrate Judge Dustin Howell for findings and recommendations, pursuant to 28 U.S.C. § 636(b). On August 14, 2023, the Court issued an Order & Advisory, ordering Olmos’s original motion to be construed as a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. (Dkt. 65, at 2). Olmos was ordered to: “(1) withdraw his [original] motion, by filing a Notice of Withdrawal or (2) amend his instant filing so that it contain[ed] all the § 2255 claims he believe[d] he [had].” (*Id.*). Olmos timely filed his amended motion on August 30, 2023. (Dkt. 68, at 1). The United States of America filed a response in opposition to the motion on December 14, 2023. (Dkt. 72). Judge Howell filed his report and recommendation on July 10, 2024. (Dkt. 73). In his report and recommendation, Judge Howell recommends that the Court dismiss Olmos’s motion. (*Id.*). On August 8, 2024, the Court sent a copy of the report and recommendation to Olmos at his current location of incarceration via certified mail. (*See* Dkts. 78, 79). As of the date of this order, Olmos has not filed any objections to the report and recommendation.

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). When no objections are timely filed, a district court can review the magistrate's report and recommendation for clear error. *See* Fed. R. Civ. P. 72 advisory committee's note ("When no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). Because no party has filed timely objections, the Court reviews the report and recommendation for clear error. Having done so and finding no clear error, the Court accepts and adopts the report and recommendation as its own order.

Accordingly, **IT IS ORDERED** that the report and recommendation of United States Magistrate Judge Dustin Howell, (Dkt. 73), is **ADOPTED**.

Olmos's Amended Motion to Vacate under 28 U.S.C. § 2255 on August 30, 2023, (Dkt. 68), is **DENIED**. Grounds One, Two, Four, and Five are barred by the collateral-attack waiver in Olmos's plea agreement and should be **DISMISSED**. Grounds Six and Seven constitute state-law

claims that are not cognizable under 28 U.S.C. § 2255 and should also be **DISMISSED**. Ground Three should be **DISMISSED** because his assertion that his attorney did not inform him of his rights is meritless.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of this order to Olmos at: David Olmos, #58583-509, BEAUMONT, U.S. PENITENTIARY, P. O. BOX 26030, BEAUMONT, TX 77720.

SIGNED on September 6, 2024.

A handwritten signature in blue ink, appearing to read 'R. Pitman', is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE